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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/920,883	08/02/2001	Shin Iima	450100-03386	5191

20999 7590 11/03/2006

FROMMER LAWRENCE & HAUG  
745 FIFTH AVENUE- 10TH FL.  
NEW YORK, NY 10151

EXAMINER

LU, SHIRLEY

ART UNIT PAPER NUMBER

2612

DATE MAILED: 11/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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EXAMINER

LU, SHIRLEY

ART UNIT PAPER NUMBER

2612

DATE MAILED: 08/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Applicant has complied and responded to the Notification of Non-Compliant Appeal brief, which was mailed 8/30/06.

The Examiner's Answer as originally mailed on 8/10/06 is repeated and attached on the following pages.


### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shirley Lu whose telephone number is (571) 272-8546. The examiner can normally be reached on 8:30-5:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeff Hofsass can be reached on (571) 272-2981. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SL

  
JEFFERY HOFSSASS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600



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**MAILED**

AUG 10 2006

Technology Center 2600

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/920,883  
Filing Date: August 02, 2001  
Appellant(s): IIMA ET AL.

Iima et al.  
For Appellant

**EXAMINER'S ANSWER**

**MAILED**

NOV 03 2006

**GROUP 2600**

This is in response to the appeal brief filed 6/26/06 appealing from the Office action  
mailed 12/29/05.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

20020010927	Kim
6698020	Zigmond
60176121	Kim Provisional

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

**Claim Rejections - 35 U.S.C. § 103**

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**2. Claim(s) 1-14 is/are rejected under 35 U.S.C. § 103(a) as being unpatentable over Zigmond et al. (6,698,020) in view of Kim (20020010927).**

As to claim 1, Zigmond et al. disclose:

A communication apparatus comprising:

a receiving means for receiving a signal comprised of a program signal and an additional signal, ("national broadcaster 18 and cable network 30 may choose to multiplex advertisement stream 64 into video programming feeds 38 and 39" (column 18, lines 20-21); (display 61, Figure 3; display 58, Figure 4));

a separating means for separating the program signal and the additional signal from said received signal ("As described above in reference to FIG. 3, a programming source 66, which may be operated by content provider 50, supplies video programming feed 52 to the advertisement insertion device 60. A video switch 68 toggles between video programming feed 52 and selected advertisements of advertisement stream 64 and transmits the selected data feed to display device 58. Video switch 68 may be actuated at an appropriate time indicated by a triggering event delivered by advertisement trigger source 70" (column 8, lines 30-37); "For example, programming sources 66 such as national broadcasters or cable networks often transmit a very brief black screen immediately preceding the onset of a series of advertisements. Such a pattern may be interpreted by ad insertion device 60 and video switch 68 to be a triggering event indicating an appropriate time to insert a selected advertisement" (column 8, lines 39-54)).

a determining means for determining whether to output in accordance with said additional signal ("FIG. 6 is a flow chart illustrating selected steps in one embodiment of a method for inserting, an advertisement into a video programming feed using the ad

insertion device 80 of FIG. 5. In step 100, the downloading of advertisements is initiated according to the methods disclosed herein. If, according to decision box 102, prefiltering is desired in order to select only certain advertisement for storage in the advertisement repository 86, the ad selection criteria are used to filter the advertisements in step 104. In step 106, the downloaded advertisements, whether prefiltered or not, are stored in advertisement repository 86" (column 17, lines 10-20)).

an output signal generating means for generating an output signal by using said separated program signal and additional signal upon determination to output in accordance with said additional signal and for generating the output signal by using said separated program signal where it is determined not to output in accordance with said additional signal, an outputting means for outputting information in accordance with said generated output signal ("FIG. 6 is a flow chart illustrating selected steps in one embodiment of a method for inserting, an advertisement into a video programming feed using the ad insertion device 80 of FIG. 5. In step 100, the downloading of advertisements is initiated according to the methods disclosed herein. If, according to decision box 102, prefiltering is desired in order to select only certain advertisement for storage in the advertisement repository 86, the ad selection criteria are used to filter the advertisements in step 104. In step 106, the downloaded advertisements, whether prefiltered or not, are stored in advertisement repository 86" (column 17, lines 10-20)); (display 61, Figure 3; display 58, Figure 4; display 58, Figure 5));

wherein a viewing fee is reduced by a predetermined amount when the displayed additional signal is an advertisement and the viewing fee is increased by a



predetermined amount when the displayed additional signal is an additional service (by foregoing advertising, the user must pay an additional fee, and instead receives 'entertainment, informational, or any other programming,' or 'additional service; should the user decide to display the advertising, a fee would not need to be paid, and hence the viewing fee is effectively reduced; statistics aggregation 61, Figure 4; "The ad selection criteria may be set or modified by the viewer, as well, in order to request or block advertisements for selected classes of goods or services. This optional feature of the invention advantageously allows the viewer to participate in a selection of advertisements. In an extreme case, the ad selection criteria 83 may be modified in response to, for example, increased subscription fees from the viewer in order to allow the viewer to forego advertisements altogether. In this case, advertisements may be replaced by entertainment, informational, or any other programming" (column 14, lines 24-35); "In an optional step, the viewer response to the displayed advertisement is monitored in step 118 according to the methods disclosed herein. When the selected advertisement is complete, the video switch resumes transmitting the video programming feed to the display device in step 120. According to decision box 122, depending on the availability of more advertisements and whether the viewer chooses to continue watching the video programming fee, the ad insertion device either selects a new advertisement in step 110 or the method proceeds to its close. If no more advertisements are to be shown, the compiled viewer response statistics are optionally reported in step 124 to the operator of the advertisement source or to a third party. If viewer response statistics are to be reported, they may be transmitted from the ad

insertion device at any convenient time. Step 124 can be performed on a periodic basis, such as once per day or once per week" (column 17, lines 33-49)).

Zigmond does not specifically disclose wherein the additional signal is displayed simultaneously with the program signal inside or outside a window of a program corresponding to the program signal. Kim discloses wherein the additional signal is displayed simultaneously with the program signal inside or outside a window of a program corresponding to the program signal [0076]. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Zigmond with Kim so as to not frustrate users who wish to view their chosen program from beginning to end without interruption (Kim [0007]).

As to claim 2, Zigmond et al. disclose:

A transmitting means for transmitting log information indicating a log of decisions whether to output in accordance with said additional signal to a transmitting side of said received signal (monitor user response 118, Figure 6; report user stats 124, Figure 6; "The ad selection criteria may be set or modified by the viewer, as well, in order to request or block advertisements for selected classes of goods or services. This optional feature of the invention advantageously allows the viewer to participate in a selection of advertisements. In an extreme case, the ad selection criteria 83 may be modified in response to, for example, increased subscription fees from the viewer in order to allow the viewer to forego advertisements altogether. In this case, advertisements may be replaced by entertainment, informational, or any other programming"(column 14, lines

24-35); "In an optional step, the viewer response to the displayed advertisement is monitored in step 118 according to the methods disclosed herein. When the selected advertisement is complete, the video switch resumes transmitting the video programming feed to the display device in step 120. According to decision box 122, depending on the availability of more advertisements and whether the viewer chooses to continue watching the video programming fee, the ad insertion device either selects a new advertisement in step 110 or the method proceeds to its close. If no more advertisements are to be shown, the compiled viewer response statistics are optionally reported in step 124 to the operator of the advertisement source or to a third party. If viewer response statistics are to be reported, they may be transmitted from the ad insertion device at any convenient time. Step 124 can be performed on a periodic basis, such as once per day or once per week" (column 17, lines 33-49)).

As to claim 3, Zigmond et al. disclose:

said receiving means receives a signal comprised of a program signal and an advertisement signal (met as discussed in claim 1).

As to claim 4, Zigmond et al. disclose:

a first communication apparatus for transmitting a signal comprised of a program signal and an additional signal (met as discussed in claim 1).

a second communication apparatus for receiving a signal transmitted by said first communication apparatus; said second communication apparatus comprising: a

receiving means for receiving the signal transmitted by said first communication apparatus (met as discussed in claim 1).

a separating means for separating the program signal and the additional signal from said received signal (met as discussed in claim 1).

a determining means for deciding whether to output in accordance with said additional signal (met as discussed in claim 1).

an output signal generating means for generating an output signal by using said separated program signal and said additional signal when it is decided to output in accordance with said additional signal and generating an output signal by using said separated program signal where it is decided not to output in accordance with said additional signal (met as discussed in claim 1).

an outputting means for outputting information in accordance with said generated output signal (met as discussed in claim 1).

wherein a viewing fee is reduced by a predetermined amount when the displayed additional signal is an advertisement and the viewing fee is increased by a predetermined amount when the displayed additional signal is an additional service (by foregoing advertising, the user must pay an additional fee, and instead receives 'entertainment, informational, or any other programming,' or 'additional service; should the user decide to display the advertising, a fee would not need to be paid, and hence the viewing fee is effectively reduced; statistics aggregation 61, Figure 4; "The ad selection criteria may be set or modified by the viewer, as well, in order to request or

block advertisements for selected classes of goods or services. This optional feature of the invention advantageously allows the viewer to participate in a selection of advertisements. In an extreme case, the ad selection criteria 83 may be modified in response to, for example, increased subscription fees from the viewer in order to allow the viewer to forego advertisements altogether. In this case, advertisements may be replaced by entertainment, informational, or any other programming" (column 14, lines 24-35); "In an optional step, the viewer response to the displayed advertisement is monitored in step 118 according to the methods disclosed herein. When the selected advertisement is complete, the video switch resumes transmitting the video programming feed to the display device in step 120. According to decision box 122, depending on the availability of more advertisements and whether the viewer chooses to continue watching the video programming fee, the ad insertion device either selects a new advertisement in step 110 or the method proceeds to its close. If no more advertisements are to be shown, the compiled viewer response statistics are optionally reported in step 124 to the operator of the advertisement source or to a third party. If viewer response statistics are to be reported, they may be transmitted from the ad insertion device at any convenient time. Step 124 can be performed on a periodic basis, such as once per day or once per week" (column 17, lines 33-49)).

Zigmond does not specifically disclose wherein the additional signal is displayed simultaneously with the program signal inside or outside a window of a program corresponding to the program signal. Kim discloses wherein the additional signal is displayed simultaneously with the program signal inside or outside a window of a

program corresponding to the program signal [0076]. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Zigmond with Kim so as to not frustrate users who wish to view their chosen program from beginning to end without interruption (Kim [0007]).

As to claim 5, Zigmond et al. disclose:

said second communication apparatus includes a transmitting means for transmitting log information indicating a log of decisions of whether to output in accordance with said additional signal to the transmitting side of said received signal (met as discussed in claim 2).

said first communication apparatus charges the user of said first communication apparatus based on said log information received from said second communication apparatus (statistics aggregation 61, Figure 4; "The ad selection criteria may be set or modified by the viewer, as well, in order to request or block advertisements for selected classes of goods or services. This optional feature of the invention advantageously allows the viewer to participate in a selection of advertisements. In an extreme case, the ad selection criteria 83 may be modified in response to, for example, increased subscription fees from the viewer in order to allow the viewer to forego advertisements altogether. In this case, advertisements may be replaced by entertainment, informational, or any other programming" (column 14, lines 24-35); "In an optional step, the viewer response to the displayed advertisement is monitored in step 118 according to the methods disclosed herein. When the selected advertisement is complete, the

video switch resumes transmitting the video programming feed to the display device in step 120. According to decision box 122, depending on the availability of more advertisements and whether the viewer chooses to continue watching the video programming fee, the ad insertion device either selects a new advertisement in step 110 or the method proceeds to its close. If no more advertisements are to be shown, the compiled viewer response statistics are optionally reported in step 124 to the operator of the advertisement source or to a third party. If viewer response statistics are to be reported, they may be transmitted from the ad insertion device at any convenient time. Step 124 can be performed on a periodic basis, such as once per day or once per week" (column 17, lines 33-49)).

As to claim 6, Zigmond et al. disclose:

said first communication apparatus transmits a signal comprised of a program signal and an advertisement signal (met as discussed in claim 3).

performs processing for reducing a fee charged to the user of said second communication apparatus for transmission of said program signal when said advertisement signal was output in said second communication apparatus based on said log information received from said second communication apparatus (met as discussed in claim 5).

As to claim 7, Zigmond et al. disclose:

said first communication apparatus performs processing for reducing the fee charged to the user of said second communication apparatus for transmission of said program

signal when said additional signal was output in said second communication apparatus based on said log information received from said second communication apparatus (met as discussed in claim 5).

As to claim 8, Zigmond et al. disclose:

said first communication apparatus charges the user of said second communication apparatus according to a condition determined in advance (met as discussed in claim 5).

As to claim 9, Zigmond et al. disclose:

said first communication apparatus transmits a signal comprised of a program signal and an advertisement signal (met as discussed in claim 1).

As to claim 10, Zigmond et al. disclose:

an operating means operated by a user, a transmitting means for issuing a request instructing the transmission of an additional signal in accordance with operation of said operating means by said user ("The present invention relates to methods and systems for selecting and inserting advertisement into a video programming feed at the household level. The advertisements to be shown to a viewer according to the invention are selected according to designated criteria in combination with information that characterizes the viewer, the content of the video programming feed, the geographical location of the household, or the like in order to efficiently target segments of the viewing population" (column 6, lines 1-12); "In an optional step, the viewer response to



the displayed advertisement is monitored in step 118 according to the methods disclosed herein. When the selected advertisement is complete, the video switch resumes transmitting the video programming feed to the display device in step 120. According to decision box 122, depending on the availability of more advertisements and whether the viewer chooses to continue watching the video programming fee, the ad insertion device either selects a new advertisement in step 110 or the method proceeds to its close. If no more advertisements are to be shown, the compiled viewer response statistics are optionally reported in step 124 to the operator of the advertisement source or to a third party. If viewer response statistics are to be reported, they may be transmitted from the ad insertion device at any convenient time. Step 124 can be performed on a periodic basis, such as once per day or once per week" (column 17, lines 33-49).

a receiving means for receiving a signal comprised of a program signal and an additional signal in accordance with said request (met as discussed in claim 1).

a separating means for separating the program signal and the additional signal from said received signal (met as discussed in claim 1).

an output signal generating means for generating an output signal by using said separated program signal and additional signal (met as discussed in claim 1).

an outputting means for output information in accordance with said generated output signal (met as discussed in claim 1).

wherein a viewing fee is reduced by a predetermined amount when the displayed additional signal is an advertisement and the viewing fee is increased by a predetermined amount when the displayed additional signal is an additional service (by foregoing advertising, the user must pay an additional fee, and instead receives 'entertainment, informational, or any other programming,' or 'additional service; should the user decide to display the advertising, a fee would not need to be paid, and hence the viewing fee is effectively reduced; statistics aggregation 61, Figure 4; "The ad selection criteria may be set or modified by the viewer, as well, in order to request or block advertisements for selected classes of goods or services. This optional feature of the invention advantageously allows the viewer to participate in a selection of advertisements. In an extreme case, the ad selection criteria 83 may be modified in response to, for example, increased subscription fees from the viewer in order to allow the viewer to forego advertisements altogether. In this case, advertisements may be replaced by entertainment, informational, or any other programming" (column 14, lines 24-35); "In an optional step, the viewer response to the displayed advertisement is monitored in step 118 according to the methods disclosed herein. When the selected advertisement is complete, the video switch resumes transmitting the video programming feed to the display device in step 120. According to decision box 122, depending on the availability of more advertisements and whether the viewer chooses to continue watching the video programming fee, the ad insertion device either selects a new advertisement in step 110 or the method proceeds to its close. If no more advertisements are to be shown, the compiled viewer response statistics are optionally

reported in step 124 to the operator of the advertisement source or to a third party. If viewer response statistics are to be reported, they may be transmitted from the ad insertion device at any convenient time. Step 124 can be performed on a periodic basis, such as once per day or once per week" (column 17, lines 33-49)).

Zigmond does not specifically disclose wherein the additional signal is displayed simultaneously with the program signal inside or outside a window of a program corresponding to the program signal. Kim discloses wherein the additional signal is displayed simultaneously with the program signal inside or outside a window of a program corresponding to the program signal [0076]. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Zigmond with Kim so as to not frustrate users who wish to view their chosen program from beginning to end without interruption (Kim [0007]).

As to claim 11, Zigmond et al. disclose:

separating a program signal and an additional signal from said received signal (met as discussed in claim 1).

determining whether to output in accordance with said additional signal (met as discussed in claim 1).

generating an output signal by using said separated program signal and additional signal where it is decided to output in accordance with said additional signal (met as discussed in claim 1).

generating an output signal by using said separated program signal when it is decided not to output in accordance with said additional signal (met as discussed in claim 1).

outputting information in accordance with said generated output signal (met as discussed in claim 1).

Reducing a viewing fee by a predetermined amount when the displayed additional signal is an advertisement; and increasing the viewing fee by a predetermined amount when the displayed additional signal is a additional service (by foregoing advertising, the user must pay an additional fee, and instead receives 'entertainment, informational, or any other programming,' or 'additional service; should the user decide to display the advertising, a fee would not need to be paid, and hence the viewing fee is effectively reduced; statistics aggregation 61, Figure 4; "The ad selection criteria may be set or modified by the viewer, as well, in order to request or block advertisements for selected classes of goods or services. This optional feature of the invention advantageously allows the viewer to participate in a selection of advertisements. In an extreme case, the ad selection criteria 83 may be modified in response to, for example, increased subscription fees from the viewer in order to allow the viewer to forego advertisements altogether. In this case, advertisements may be replaced by entertainment, informational, or any other programming" (column 14, lines 24-35); "In an optional step, the viewer response to the displayed advertisement is monitored in step 118 according to the methods disclosed herein. When the selected advertisement is complete, the video switch resumes transmitting the video programming feed to the display device in step 120. According to decision box 122, depending on the availability of more

advertisements and whether the viewer chooses to continue watching the video programming fee, the ad insertion device either selects a new advertisement in step 110 or the method proceeds to its close. If no more advertisements are to be shown, the compiled viewer response statistics are optionally reported in step 124 to the operator of the advertisement source or to a third party. If viewer response statistics are to be reported, they may be transmitted from the ad insertion device at any convenient time. Step 124 can be performed on a periodic basis, such as once per day or once per week" (column 17, lines 33-49)).

Zigmond does not specifically disclose wherein the additional signal is displayed simultaneously with the program signal inside or outside a window of a program corresponding to the program signal. Kim discloses wherein the additional signal is displayed simultaneously with the program signal inside or outside a window of a program corresponding to the program signal [0076]. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Zigmond with Kim so as to not frustrate users who wish to view their chosen program from beginning to end without interruption (Kim [0007]).

As to claim 12, Zigmond et al. disclose:

transmitting log information indicating a log of decision of whether to output in accordance with said additional signal from said reception side to the transmission side (met as discussed in claim 2).

charging said reception side user based on said log information on said transmission side (met as discussed in claim 5).

As to claim 13, Zigmond et al. disclose:

transmitting a signal comprised of a program signal and advertisement signal therein from said transmission side to said reception side (met as discussed in claim 3).

having said transmission side perform processing for reducing a fee charged to said reception side user for transmission of said program signal where said advertisement signal is output on said reception side based on said log information received from said reception side (met as discussed in claim 6).

As to claim 14, Zigmond et al. disclose:

a step of processing for increasing the fee charged to said reception side user for transmission of said program signal on said transmission side when said additional signal is output on said reception side based on said log information received from said reception side (met as discussed in claim 6).

**(10) Response to Argument**

**(10) Response to Argument**

- a. Rejection under 103(a) of claims 1, 4, 10 and 11.

Appellant argues, "the cited portions of the provisional application do not teach or suggest that the additional signal is displayed simultaneously with the program signal inside or outside a window of a program corresponding to the program signal, on pages 5-7 of the appeal brief.

In response, Appellant should note the following:

Page 1. Kim Provisional (60176121).

Kim provides support for the claimed "the additional signal is displayed simultaneously with the program signal inside or outside a window of a program corresponding to the program signal" on page 1, lines 12-17 which discloses "*a video output reconstruction unit which generates the output video signal with the rendered Banner information and the decoded video output*".

Furthermore, page 1 references figure 2 (page 5). The video reconstruction unit clearly outputs both the decoded video and banner information together.

Displaying the video with the rendered banner meets appellant's "simultaneous display" limitation of the additional signal and program signal, since the video signal and the banner (or AD) are output and shown together.

Page 3. Kim Provisional (60176121).

The object of Kim's invention is to deliver digital TV programs without imposing any or little service charge to users by presenting commercial banner advertisement on

user video presentation devices on page 3, first paragraph. This means that the user is able to watch the digital TV programs with the commercials at the same time.

Page 4. Kim Provisional (60176121).

Kim supports the claimed "the additional signal is displayed simultaneously with the program signal inside or outside a window of a program corresponding to the program signal" on page 4 of the provisional.

First, Kim (page 4, lines 2-4) states that "*the SO can occupy partially the user's video presentation device connected the Free Digital TV receiver to present rendered Banner Information for commercial advertisement purpose and the SO shall not impose any charge or shall impose little service charge to the user for their Digital TV service.*" Again, this is referring to the fact that users can watch a TV program along with a commercial advertisement.

Secondly, Kim (page 4, lines 5-8) states that "...the user's Free Digital TV receiver receives and demodulates the signal of the channel that the user tuned, decodes and delivers the regular TV programs to the user's presentation device, and also decodes, renders, and presents the Banner Information to the user's video presentation device."

Thirdly, Kim (page 4, lines 9-16) describes figure 2 with detail explanation that the reconstruction unit outputs the video signal with the rendered Banner information and decoded video output.



**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Shirley Lu

Conferees:

Chris Kelley

Chris Grant



CHRISTOPHER GRANT  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600